

December 2, 2004
Case No.: AUS920000805US1 (9000/14)
Serial No.: 09/738,371
Filed: December 15, 2000
Page 12 of 20

-- REMARKS --

Applicants thank the Examiner and his supervisor for their courtesies shown during the telephonic interview of November 23, 2004.

The present amendment replies to a Non-Final Office Action dated August 2, 2004. Claims 1-21 are currently pending in the present application. Claims 1, 4, 6-9, 12, 15 and 16, have been amended and claims 3, 13 and 21 have been cancelled. The amendment to the claims has not been made to avoid any reference, and instead, the claim has been amended to expedite prosecution. No new matter has been added with the amendment.

In the Non-Final Office Action, Examiner Chea rejected pending claims 1-21 on various grounds. The Applicants respond to each ground of rejection as subsequently recited herein, and respectfully request reconsideration and further examination of the present application under 37 CFR § 1.112:

A. The drawing were objected to for failing to comply with 37 CFR 1.84(p)(5)

The drawings were objected to because they either do not include reference numbers mentioned in the specification or include reference numbers not mentioned in the specification. FIG. 2A has been amended to correct inadvertent errors in numbering of elements depicted. Support for these amendments can be found on page 6 lines 10 to 11 of the present application. No new matter has been added with the corrected drawing sheet.

Additionally, the specification has been amended to correct inadvertent typographical errors relating to FIGS. 3A to 3C. In the specification, these figures were referred to as FIGS. 4A to 4C, respectively. No new matter was added with the amendment to the specification. Withdrawal of these objections is respectfully requested.

December 2, 2004
Case No.: AUS920000805US1 (9000/14)
Serial No.: 09/738,371
Filed: December 15, 2000
Page 13 of 20

- B.** The abstract was objected to because a phrase is used that can be implied

The abstract has been amended to remove this implied phrase. Withdrawal of the objection is respectfully requested.

- C.** The specification was objected to for informalities

The specification was objected to for an informality of making reference to clients 61-62 and server 61. The specification has been amended to correct this inadvertent typographical error. No new matter has been added with the correction of this error. Withdrawal of the objection to the specification is requested.

- D.** Claims 9-14 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter Applicant regards as the invention

Claims 9-14 were rejected by Examiner Chea under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter Applicant regards as the invention. Claim 9 has been amended to provide proper antecedent basis for the claim limitation. Claims 10-14 depend from the amended claim. Withdrawal of the rejection of claims 9-14 under 35 U.S.C. § 112, second paragraph is respectfully requested.

December 2, 2004
Case No.: AUS920000805US1 (9000/14)
Serial No.: 09/738,371
Filed: December 15, 2000
Page 14 of 20

E. Claims 1-13, 15-19 and 21 were rejected under 35 U.S.C. § 102(b) as being anticipated by Liron (U.S. Patent No. 5,598,532)

Claims 1-13, 15-19 and 21 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,598,532 to Liron ("the Liron Patent"). This rejection is traversed. The Applicants have thoroughly considered Examiner Chea's remarks concerning the patentability of independent claims 1, 9, 15 and 16 over the Liron Patent. The Applicants have also thoroughly read the Liron Patent.

In order to maintain this §102(b) rejection, each and every element of the claimed invention must be disclosed in as great detail by the reference. Because the reference does not disclose each and every element, this rejection must fall.

Specifically, the Liron Patent does not disclose

1. identifying a plurality of node clusters in response to said collection of said set of performance data, correlating at least one property of each of the identified node clusters with at least one performance rule to determine a compliance of the node cluster to the performance rule and allocating the service to one of the complying node clusters as recited in amended independent claim 1;

2. an engine operable to utilize at least one performance rule for said plurality of node clusters as related to said service to identify a first node cluster of said plurality of node clusters for supporting said service for said plurality of interconnected nodes, wherein the engine is further operable to provide a map representative of each node cluster in compliance with at least one performance rule as related to the service and to allocate the service to one of the complying node clusters as recited in independent claims 9 and 16; and

December 2, 2004
Case No.: AUS920000805US1 (9000/14)
Serial No.: 09/738,371
Filed: December 15, 2000
Page 15 of 20

3. a means for identifying a plurality of node clusters in response to said set of performance data; a means for providing a map representative of each node cluster in compliance with at least one performance rule as related to the service; and a means for allocating the service to one of the complying node clusters as recited in independent claim 15.

The Examiner references column 5, lines 29-36 as disclosing the claim limitation identifying a plurality of node clusters in response to said collection of said set of performance data. The reference citation is reproduced below for convenience.

Optimizer 29 then optimizes 109 the network configuration, and produces configuration recommendations 33 describing how to re-configure network 11 in order to achieve the network performance objectives defined by goals 31. Optimizer 29 uses a set of optimization rules stored in memory 43 for optimizing 109 network 11 depending on goals 31. Where goals 31 specify the performance objectives.

However, this citation merely discloses an optimizer that optimizes a network configuration, and produces configuration recommendations describing how to re-configure the network to achieve the network performance objective defined by a set of goals. Thus, the Liron parent as cited, or elsewhere within the reference, does not teach this limitation.

The Examiner also identified, during the telephonic interview, the paragraph beginning at column 6 lines 5 as disclosing the claimed element of identifying a plurality of node clusters in response to said collection of said set of performance data. The reference citation is reproduced below for convenience.

2. Optimization process 200 then identifies 207 all clients 15 communicating with R. Clients 15 are distributed throughout network 11 in nodes 16 on various LAN segments 13. Clients 15 are uniquely identified and are stored in list CLIENT. The j-th client in list CLIENT is CLIENT(j), where j=1, 2, ..., C, C being the number of clients 15 on network 11 communicating with shared central resource 39.

December 2, 2004
Case No.: AUS920000805US1 (9000/14)
Serial No.: 09/738,371
Filed: December 15, 2000
Page 16 of 20

This is an inaccurate reading of the Liron Patent. The Liron Patent teaches a method that includes a step for identifying all clients that are already communicating with the shared central resource to be optimized. In distinct contrast, in the method and system claimed by the Applicants the plurality of node clusters are identified before the service is allocated.

Furthermore, the Liron patent does not teach correlating at least one property of each of the identified node clusters with at least one performance rule to determine a compliance of the node cluster to the performance rule and allocating the service to one of the complying node clusters, as recited in amended independent claim 1.

Therefore, the Liron Patent does not disclose, teach, or suggest every claimed element of the Applicants' invention and thus, cannot anticipate the invention as claimed by the Applicants. Withdrawal of the rejection of independent claims 1, 9, 15 and 16 under 35 U.S.C. §102(b) as being anticipated by the Liron Patent is therefore respectfully requested.

Regarding claims 4 and 5, the Liron patent does not teach a method that is further defined wherein the map includes at least one server within a first cluster of said plurality of clusters for supporting the service on the network as recited in claim 4 or allocating the service to a first server of said at least one server as recited in claim 5.

Regarding claims 6, 7 and 8, the Liron patent does not teach a method wherein collecting the set of performance data representative of the set of physical characteristics of the network comprises 1) probing the network for a round trip time as recited in claim 6; 2) probing the network for a hop count as recited in claim 7; or 3) probing the network for a bottleneck link speed as recited in claim 8.

Regarding claims 10, 11 and 12, the Liron patent does not teach a system wherein a first performance data of said set of performance data comprises 1) a round trip time of said plurality of interconnected nodes, as recited in claim 10; 2) a hop count of said plurality of interconnected nodes, as recited in claim 11; or 3) a bottleneck link speed the plurality of interconnected nodes, as recited in claim 12.

December 2, 2004
Case No.: AUS920000805US1 (9000/14)
Serial No.: 09/738,371
Filed: December 15, 2000
Page 17 of 20

Regarding claims 17, 18 and 19, the Liron patent does not teach a server wherein a first performance data of said set of performance data comprises 1) a round trip time of the plurality of interconnected nodes, as recited in claim 17; 2) a hop count of the plurality of interconnected nodes, as recited in claim 18; or 3) a bottleneck link speed of the plurality of interconnected nodes, as recited in claim 19.

Furthermore, claims 2-8 depend from independent claim and include all of the elements and limitations of independent claim 1; claims 10-13 depend from independent claim 9 and include all of the elements and limitations of independent claim 9; and claims 17-19 and 21 depend from independent claim and include all of the elements and limitations of independent claim 16. It is therefore respectfully submitted by the Applicants that claims 2-8, 10-13, 17-19 and 21 are allowable over the Liron Patent for at least the same reason as set forth above with respect to independent claims 1, 9, 15 and 16. For the above stated reasons, withdrawal of the rejection of dependent claims 2-8, 10-13, 17-19 and 21 under 35 U.S.C. §102(b) as being anticipated by the Liron Patent is therefore respectfully requested.

F. Claims 14 and 20 were rejected under 35 U.S.C. §103(a) as being unpatentable over Liron in view of Johnson (U.S. Patent No. 6,078,946)

The Applicant has thoroughly considered Examiner La's remarks concerning the patentability of claims 14 and 20 over Liron in view of Johnson. The Applicant respectfully traverses this 35 U.S.C. §103(a) rejection. The Applicants have also thoroughly read the Johnson Patent.

As the Examiner is well aware, in order to make a *prima facie* case of obviousness under § 103(a), all of the *claimed* elements of the invention must be taught or suggested by the prior art (MPEP § 2143.03)

December 2, 2004
Case No.: AUS920000805US1 (9000/14)
Serial No.: 09/738,371
Filed: December 15, 2000
Page 18 of 20

For at least the same reasons as stated above, the Applicants respectfully maintain that the Liron Patent does not teach or suggest all of the claimed elements of Applicants' invention. Additionally, Liron in combination with Johnson does not teach or suggest all of the claimed elements of Applicants' invention. Specifically, Johnson does not teach or suggest, at the least, identifying a plurality of node clusters as claimed by the Applicants in independent claims 9 and 16.

Claim 14 depends from independent claim 9 and claim 20 depends from independent claim 16, both claims including all of the limitations of their respective independent claim. Thus, claims 14 and 20 are allowable over Liron in view of Johnson for at least the same reasons as stated above for claims 9 and 16.

Furthermore, as the Examiner is well aware, where an independent claim is non-obvious, any claim depending therefrom is also non-obvious. *See*, MPEP 2143. Applicants, therefore, request the withdrawal of the rejection of dependent claims 14 and 20 under § 103(a).

December 2, 2004
Case No.: AUS920000805US1 (9000/14)
Serial No.: 09/738,371
Filed: December 15, 2000
Page 19 of 20


SUMMARY

Examiner Chea's 35 U.S.C. §§ 102(b), 103(a) and 112, second paragraph rejections of claims 1-21 have been obviated by the above amendment and remarks. The Applicants respectfully submit that claims 1, 4-12 and 14-20 fully satisfy the requirements of 35 U.S.C. §§ 102, 103 and 112. In view of the foregoing amendments and remarks, favorable consideration and early passage to issue of the present application are respectfully requested.

Dated: December 2, 2004

Respectfully submitted,
Franck Barillaud, *et al.*

CARDINAL LAW GROUP
Suite 2000
1603 Orrington Avenue
Evanston, Illinois 60201
Phone: (847) 905-7111
Fax: (847) 905-7113



Frank C. Nicholas
Registration No. 33,983
Attorney for Applicants